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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MANAHAN, TODD E

ART UNIT	PAPER NUMBER
3732	12

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,488

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Todd E. Manahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-166 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-166 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7, 10-15, 19, 24-25, 29, 40-43, 45-57, 61, 62, 64-70, 74, 79-81, 84-86, 94-97, 99-112, 116, 117, 119-125, 129, 134-136, 139-141, 149-153, 155-166 are rejected under 35 U.S.C. 102(b) as being anticipated by Cloud (United States Patent No. 5,348,031).

Cloud discloses a device comprising a receptacle body defining a reservoir 24, and application element 32, a cavity 23 in flow communication with the reservoir, and a support element 30 on which the application element is mounted. The support element is mounted to pivot relative to the receptacle body between a first position wherein the application element is received in the cavity (figure 2) and a second position wherein the application element is at least partially exposed. Regarding the limitation in claim 1, that the reservoir is “configured to contain a product”, reservoir 24 could hold a product therein and thus is deemed to be so “configured”. The receptacle body is configured to be used as a handle (col. 3, lines 38-53). The support element is mounted via a film hinge 19. The applicator of Cloud is used to apply cosmetic to the skin and thus is deemed “configured to apply a product to at least one of skin, hair...”

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Claims 1-4, 6-9, 11, 13-33, 35-43, 45-59, 61-64, 66, 68-88, 90-97, 99-114, 116-119, 121, 123-143, 145-153, 155-166 are rejected under 35 U.S.C. 102(b) as being anticipated by Nian (United States Patent No. 5,382,107).

Nian discloses a device comprising a receptacle body defining a reservoir 63 filled with a product, and application element 74, a cavity 64 in flow communication with the reservoir, and a support element 7 on which the application element is mounted. The support element is mounted via a spring-biased hinge so as to pivot relative to the receptacle body between a first position wherein the application element is received in the cavity and a second position wherein the application element is at least partially exposed.

Claims 1-4, 6-9, 11-16, 19-21, 24-30, 32-43, 45-59, 61-64, 66, 68-71, 74-76, 79-97, 99-114, 116-119, 121, 123-127, 129-131, 134-153, 155-166 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cesari (United States Patent No. 3,741,667).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 60, and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesari.

To provide the device of Cesari with a sealing member, i.e. a gasket, would have been obvious to one skilled in the art in order to assure that no product will leak from the device when the support element is in the first position.

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Claims 44, 98, and 154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesari in view of Landsman (United States Patent No. 4,056,110).

Cesari discloses the invention essentially as claimed except for the head portion having the cavity being removably attached to the receptacle body, i.e. reservoir. Landsman discloses a similar device in which the head portion 16 is removably connected to the receptacle body and reservoir 10 so that the reservoir may be readily replenished when empty. It would have been obvious to one skilled in the art to removably attach the head portion to the receptacle body in view of Landsman in order to permit ready replenishment of toothpaste in the reservoir.

Response to Arguments

Applicant's arguments filed 23 January 2003 have been fully considered but they are not persuasive.

In response to applicant's arguments that the recess 24 of cloud is not "configured to contain a product", it is noted that the configuration of the recess 24 is such that it could hold a product if so desired. As such the recess is deemed to be "configured to hold a product".

With regard to applicant's arguments that neither Nian or Cesari disclose the application element "configured to apply a product to at least one of skin, hair, toenails and fingernails and/or the reservoir containing a product chosen from at least one of a skin product, a hair product, a toenail product and/or a fingernail product", it is noted that both Nian and Cesari disclose the applicator element being a brush. Clearly a brush could be used to apply a product to at least one of skin, hair, toenails and fingernails and thus is deemed to be so configured. Regarding claims 7, 62 and 117, the bristles of forming the brush can be compressed and thus the application element is deemed to be of a "compressible material".

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With regard to applicant's arguments that Cesari does not disclose the applicator made of a sintered material as set forth in claims 10, 65 and 120, applicant's attention is directed to the rejects set forth previously and repeated above. These claims were not rejected using Cesari and thus such arguments are deemed moot.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 703 308-2695. The examiner can normally be reached on Mon-Fri.

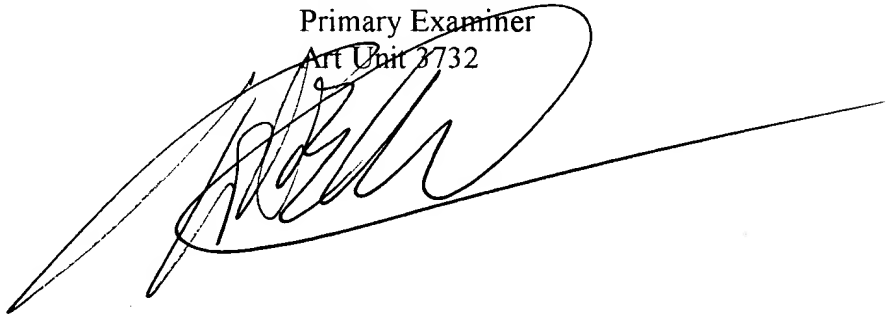
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd E. Manahan
Primary Examiner
Art Unit 3732

T.E. Manahan
5 April 2004

A large, stylized handwritten signature in black ink, likely belonging to Todd E. Manahan, is written over the printed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.